



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration decision.

SUMMARY: The Department of Education (Department) gives notice that, on June 11, 2015, an arbitration panel (the Panel) rendered a decision in the matter of Maryland Department of Education v. General Services Administration (Case no. R-S/13-06).

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the Panel decision from Donald Brinson, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7310. If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: The Panel was convened by the Department under the Randolph-Sheppard Act (Act), 20 U.S.C.

107d-1(b), after receiving a complaint from the Maryland State Department of Education (MSDE), the State Licensing Agency (SLA) designated to administer the Randolph-Sheppard program in Maryland. Under 20 U.S.C. 107d-2(c) of the Act, the Secretary publishes in the Federal Register a synopsis of each Panel decision affecting the administration of vending facilities on Federal and other property.

Background

The complainant, MSDE, filed a grievance against the respondent, the General Services Administration (GSA), challenging the award of a contract for cafeteria service. The Panel decided the case on motions for summary judgment. The chair and one member sustained the grievance, and one member dissented.

The issue before the Panel was whether GSA violated the Act when it awarded the contract for operation of cafeteria services to a bidder other than the SLA and, if so, what was the appropriate remedy.

MSDE argued that GSA violated the Act by awarding a contract for cafeteria service at the Social Security Administration's cafeteria in Baltimore, Maryland, to a private entity without establishing a competitive range to carry out the Act's requirement that priority be given to

blind vendors. The SLA had submitted a proposal in partnership with a blind vendor.

GSA took the position that it was not required to establish a competitive range and that the SLA had confused the requirements of the solicitation, the Federal Acquisition Regulations (FAR), and the Act. Specifically, GSA argued that, while the FAR requires a competitive range only if discussions are held, the solicitation provided that GSA could make an award without discussion. GSA further argued that when there is a single offer that clearly exceeds all others and merits direct award, it can make an award to that offeror without creating a competitive range.

Synopsis of the Panel Decision

At the MSDE's request, the Panel was convened on June 11, 2015. The Panel concluded that GSA violated the Act by failing to establish a competitive range. The Panel recognized that Congress established the Act's priority requirement to enhance economic opportunity for the blind. When a Federal agency solicits services, it is required to invite the SLA to bid on the contract. If the SLA's proposal falls within the competitive range and has been ranked among those with a reasonable chance of being

selected, a Federal agency must give priority to the SLA's proposal.

GSA acknowledged that a competitive range was not established and that it awarded the contract based on its determination that the private company's proposal merited a direct award, but the failure to create a competitive range constituted a violation of the Act. (Southfork Sys. v. United States, 141 F. 3d 1124 (Fed. Cir. 1998); Kentucky v. United States, 2014 WL 7375566 (W.D. Ky. Dec.29, 2014)).

Having found that GSA violated the Act, the Panel next considered the issue of remedy. The Panel recognized that, while it had no authority to impose a specific remedy, the Act requires the head of the agency, subject to appeal, to take such action as may be necessary to carry out the Panel's decision.

The Panel recommended that GSA give (1) notice of the Panel's decision to the current contractor and (2) notice that the contract would terminate within a specified period. The Panel also recommended that GSA enter into direct negotiations with the SLA. If the GSA declined to enter into such negotiations, the Panel recommended that GSA issue a new solicitation, with a competitive range.

The views and opinions expressed by the Panel do not necessarily represent the views and opinions of the Department.

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You may also access documents of the Department published in the Federal Register by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 11, 2017.

Ruth E. Ryder,
Deputy Director, Office of Special
Education Programs, delegated the
duties of the Assistant Secretary
for Special Education and
Rehabilitative Services.

